IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4648 OF 2004

The Lasalgaon Agril. Produce
Market Committee & Anr. .. Petitioners

Versus

The Maharashtra state Agril.
Produce Marketing Board & Ors. .. Respondents

Mr.P.N.Joshi for the petitioners

Mr.V.P.Malvankar, A.G.P. for the State

Mr.Sunil Patil, Deputy Secretary Co-operation, Marketing & Textiles Department, Mantralaya present

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ.

DATED: 11TH AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. In the present petition, the petitioner is challenging the order passed by respondent no.4 in exercise of the powers conferred under section 59 of the Maharashtra Agricultural Produce (and Regulations) Act, 1963 exempting agricultural produce brought for the purpose of export by traders from levy of 1% of market fees. Some of

the material facts are as under:

2. The petitioner herein is a Market Committee duly constituted under the provisions of Maharashtra Agricultural Produce (and Regulations) Act, 1963 and is interalia conferred with the various functions including levy of market fees and / or supervision fees from the traders. In respect of agricultural produce brought to the market for exports, the State Government has exempted levy of 1% which is imposed by the market committee. Thus, the petitioners are not entitled to recover the said levy on goods meant for exports.

3. It is the case of the petitioner that in so far as the business of the petitioner is concerned which essentially deals only in onions and the same are substantially meant for export. Thus exemption from the payment of levy is likely to substantially effect the income of the petitioner for running the said market. It is the case of the petitioner that the petitioner has made thereafter various representations but the same has not been

considered by the respondents and therefore, the petitioner has filed the present petition challenging the exemption order issued by the respondent no.4 in exercise of power conferred under section 59 of the said act. The respondents have filed a reply and it has been interalia stated therein as under":

> "3. I say that as per the provisions under section 59 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 the notifications issued by the State of Maharashtra. It is true that the petitioners have made representation at various offices and marked a copy of the representation to Respondent No.3 i.e. District Deputy Registrar, Co-operative Societies, Nashik since the representation has been made after the issuance of the notification and also Respondent No.3 i.e. District Deputy Registrar, Co-operative Societies, Nashik is not empowered to considered the representation of the petitioners.
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> 4. I say that the contention of the petitioners that the notification will effect the agriculturist and they will be deprived of their rights to get their agriculture produce regulated in the market yard is baseless hence the contentions of the petitioners are denied by Respondent No.3 i.e. District Deputy Registrar, Co-operative Societies, Nashik."

4. We have heard the parties. It is an admitted

position that before exemption order is issued under section 59 of the Maharashtra Agricultural Produce (and Regulations) Act, 1963, the respondent no.4 has not given any hearing to the petitioner. The provision of section 59 interalia prescribes that no order of exemption can be passed to the prejudice of any market committee without giving an opportunity of hearing to such market committee. The provision of the said section 59 reads as under:

> "59. The State Government may, by a general or special order, in the Official Gazette, exempt any Market Committee or any class of persons from any of the provisions of this Act or any rules made thereunder, or may direct that such provision shall apply to such Market Committee or to such class of persons with such modifications not affecting the substance thereof as may be specified in that order:
>
> Provided that, no order to the prejudice of any Market Committee shall be passed without an opportunity being given to such Market Committee to represent its case."

5. We are of the opinion that without going into the merits or otherwise of the issues involved in

the present petition we can remand the matter back to the government because under the statutory provisions a personal hearing is required to be granted in compliance with the principle of natural justice, however, the same has been denied. We are at the same time conscious of the fact that the said order is passed in the interest of boosting the export and removing the various procedural blockages. Therefore we are of the view that while remanding the matter back for a hearing we should not disturb the order of exemption passed by the government.

6. We thus, accordingly direct the respondents to give hearing to the petitioner and decide the matter within a period of 15 days from today. However it is clarified that the impugned order dated 1st January 2003 passed under section 59 of the act will continue to remain in operation subject to the final decision of the respondent no.4 in that behalf. We hope that respondent no.4 will take up the matter expeditiously and dispose of the same within a period of 3 weeks from the

date of this order.

7. With the aforesaid direction, we dispose of the aforesaid petition. However, there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.